

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
1:14-cv-199-FDW
(1:09-cr-00017-GCM-DLH-1)

ALBERT CHARLES BURGESS,)
)
 Petitioner,)
)
 v.)
)
 ATTORNEY GENERAL)
 OF THE UNITED STATES,)
)
 Respondent.)
 _____)

ORDER

THIS MATTER is before the Court on consideration of Petitioner's pro se petition under the All Writs Act, 28 U.S.C. § 1651, for relief from his criminal judgment. For the reasons that follow, the petition will be dismissed.

Petitioner was convicted by a jury following a two-day trial on two counts relating to the receipt and possession of materials which portrayed minors engaged in sexually explicit conduct, in violation of 18 U.S.C. §§ 2252(a)(4)(B) (Count One), and 18 U.S.C § 2252(a)(2) (Count Two). Petitioner was sentenced to a total term of 292-months' imprisonment and he is presently incarcerated. (1:09-cr-00017-GCM, Doc. No. 185: Judgment in a Criminal Case). Petitioner's convictions and sentence were affirmed on appeal to the United States Court of Appeals for the Fourth Circuit, save for the restitution order which was vacated and remanded for further consideration by the district court. See United States v. Burgess, 684 F.3d 445 (4th Cir.), cert. denied, 133 S. Ct. 490 (2012).

On August 1, 2014, the Clerk docketed the present petition for relief. On August 8, 2014,

the Clerk's office sent notice to Petitioner that his filing fee of \$5.00 was not submitted along with his instant habeas petition, nor did he submit a copy of his prisoner trust account or an affidavit to proceed in forma pauperis. A notice regarding this deficiency, along with an application to proceed without prepayment of fees, was mailed to Petitioner that same day, but to date, no response has been received from Petitioner save for a letter which exclaimed that the "\$5.00 filing fee is on the way from the U.S. Treasury[.]" (1:14-cv-199, Doc. No. 2). However, no payment has been submitted nor has Petitioner provided the necessary affidavit. Accordingly, this petition will be dismissed without prejudice for failure to submit the necessary fee or application to proceed further in this matter.

IT IS, THEREFORE, ORDERED, that Petitioner's § 1651 petition will be **DISMISSED without prejudice.**

The Clerk is directed to close this civil case.

IT IS SO ORDERED.

Signed: March 3, 2015

A handwritten signature in cursive script, reading "Frank D. Whitney", written over a horizontal line.

Frank D. Whitney
Chief United States District Judge

